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September 28, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Notice of Ex Parte Presentation

Magalie Roman Salas, Esq.
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Room TW-B204
Washington, D.C. 20554

Re: In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor, to SBC Communications Inc., Transferee, CC Docket No. 98-141

Dear Ms. Salas:

Please be advised that on Monday, September 27, 1999, Roger Toppins of SBC Communications Inc. and Michael Kellogg and Austin Schlick of this firm met with Christopher Wright, Suzanne Tetreault, and Susan Aaron of the Office of General Counsel, and Robert Atkinson and Michelle Carey of the Common Carrier Bureau, in connection with the above-referenced matter. The purpose of the meeting was to discuss the carrier-to-carrier promotions included in the proposed SBC/Ameritech merger conditions. The attached letter sent today to Mr. Wright addresses particular issues that were discussed.

Should you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

Austin C. Schlick

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List ABCDE

cc: Mr. Wright (w/o attachment)
Ms. Tetreault
Ms. Aaron
Mr. Atkinson
Mr. Krattenmaker
Ms. Carey
Mr. Dever
Ms. Mikes
Ms. Attwood
Mr. Bailey
Mr. Dixon
Ms. Kinney
Ms. Whitesell
Ms. Brown
Ms. Aaron
Ms. Tetreault

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September 28, 1999

Ex Parte Presentation

Christopher J. Wright, Esquire
General Counsel
Federal Communications Commission
445 Twelfth Street, S.W.
Room 8C-723
Washington, D.C. 20554

Re: In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor, to SBC Communications Inc., Transferee, CC Docket No. 98-141.

Dear Mr. Wright:

In our meeting yesterday, you asked how limitations on the availability of carrier-to-carrier promotions under the proposed SBC/Ameritech merger conditions differ from limitations that would be unlawfully discriminatory under section 252(e)(2)(A)(i) or section 252(i) of the Communications Act. There are several relevant distinctions, which serve to confirm the lawfulness of the limitations in the proposed merger conditions.

As you know, Sections XIV through XVI of the proposed merger conditions establish three promotional offerings designed to accelerate the growth of residential competition in SBC/Ameritech's 13-state local service area. Section XIV offers interested telecommunications carriers a discount of 25 percent off of the state-determined price for unbundled local loops used to provide local residential services. Section XV provides interested resellers an increased wholesale discount – starting at 32 percent off of the retail rate – for residential services. Section XVI makes available the "UNE platform" for providing local residential services, without regard to whether this end-to-end combination of UNEs would otherwise be required.

Facilities or services may be ordered under each promotion during an "Offering Window." The Offering Window varies with the promotion. See Paragraphs 46, 49, 52. In each case, however, the Offering Window ends no later than when SBC/Ameritech has provided

a maximum number of promotional facilities or services in a particular state. For example, the unbundled loop promotion ends in a state at the latest of several specified events (Paragraph 46a), or when SBC/Ameritech provides a specified number of discounted loops in the state (Paragraph 46g). Likewise, the resale and UNE platform promotions end 3 years after the beginning of the Offering Window, or in the first month after the state-specific cap is reached (Paragraphs 49, 52). Facilities and services purchased under a promotion will be provided under the promotional terms for 3 years. See Paragraphs 46c, 48b, 51b. The default rules for UNEs and resold services established by the 1996 Act and implementing decisions will continue to apply at all times, ensuring that carriers will take the promotional terms only if they are more generous than what the law otherwise requires.

Making contractual terms available for a limited period of time is standard commercial practice and consistent with the pick-and-choose requirements of section 252(i), as the Commission has recognized. See Local Competition Order, 11 FCC Rcd 15499, 16139-40, ¶¶ 1315, 1319; see also id. at 15970-71 ¶¶ 948-950 (resale promotions). Nevertheless, it was suggested that placing a volume-related limitation on an offer might be discriminatory under sections 252(e)(2)(A) and 252(i) if a particular carrier has an "inside track" on buying under the favorable terms, and can prevent other carriers from obtaining those same terms. No such concern exists here. The proposed conditions ensure all CLECs the same notice of promotions, the same opportunity to incorporate promotional terms into an interconnection and/or resale agreement, and the same opportunity to have that agreement timely approved by the state commission. See Paragraphs 45, 47, 50. All CLECs will receive the same notice that the volume trigger for closing the Offering Window is approaching. See Paragraphs 46g, 49, 52. Furthermore, the caps established by the proposed conditions are so high – collectively covering CLEC service to more than 1.2 million residential lines in California and 483,000 residential lines in Illinois, for example – that no CLEC could realistically exhaust them in a short period of time. If a volume-related time limit is triggered, it will be because the merger conditions and SBC/Ameritech's other local-market initiatives have, over the course of months or years, succeeded in sparking a broad-based surge in residential local competition.

It also was suggested that a limited promotion might violate sections 252(e)(2)(A) and 252(i) if, although nominally available to all carriers on the same terms and conditions, the promotion was in fact crafted so that it could be used solely by one carrier or a favored group of carriers. Again, that concern has no application here. As already explained, all carriers have the same opportunity to order and purchase facilities and services under the promotional terms. While the promotions must be used to serve residential customers, that condition benefits the public by focusing the promotion on an area of local competition that is comparatively undeveloped and would benefit most greatly. Such conditions, moreover, are specifically permissible in a voluntarily negotiated agreement (as opposed to an arbitrated agreement). See 47 U.S.C. § 252(a)(1); see also Joint Reply of SBC Communications Inc. and Ameritech Corporation to Comments Regarding Merger Conditions at 29-39 (filed July 26, 1999). The volume-based expiration dates for the Offering Windows also encourage CLECs to roll-out residential services earlier, rather than later, to ensure that they can obtain the promotional terms

for as many lines as possible. The conditions on SBC/Ameritech's promotional offerings therefore are narrowly drawn to serve the public interest objectives of the proposed conditions, without advantaging or disadvantaging any particular CLEC or CLECs.

Another distinguishing feature of the carrier-to-carrier promotions is that they will be established in the context of a license-transfer order. The Commission Staff has identified specific harms that they believe will be associated with the SBC/Ameritech merger, and have negotiated a package of proposed conditions that they believe addresses, and outweighs, those perceived harms. In particular, the carrier-to-carrier promotions will further open Ameritech's and SBC's local markets to competition and improve consumer welfare by spurring additional local residential service options. Limitations on the promotional offers serve to focus the benefits of the merger on the Staff's perceived harms and to ensure that the merger benefits overcome those perceived harms, without becoming an open-ended, Commission-mandated transfer of wealth from SBC/Ameritech to CLECs. The limitations contained in the proposed conditions thus are necessary to ensure the reasonableness of the proposed conditions in the context of this merger.

In short, endorsing Sections XIV-XVI of the proposed merger conditions would not establish any rule that would be subject to abuse in future proceedings. These provisions require SBC/Ameritech to make an offer that will be generally available in practice, and that advances the interests of CLECs and consumers alike. The provisions do not require any CLEC to bargain away any rights afforded under the 1996 Act. Because all carriers have the same opportunity to take advantage of the promotions, or to negotiate or arbitrate other terms in accordance with the 1996 Act if they prefer, there can be no legitimate discrimination concerns.

Please let me know if you have any questions.

Sincerely,

Austin C. Schlick